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Supreme Court, U.S.
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No. 97-554

In The

Supreme Court of the United States

October Term, 1996

JAMES E. TUCKER,

Petitioner,

vs.

MARILYN OUTWATER,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

Petitioner James Tucker commenced this action pursuant to 42 U.S.C. § 1983 and the Fourteenth Amendment against two counties, several law enforcement officers, and Marilyn Outwater, a Town Justice in the Town of Watertown, Jefferson County, New York. Petitioner seeks damages and attorneys' fees for his alleged false arrest, malicious prosecution and illegal confinement.

Upon respondent Outwater's motion to dismiss, the United States District Court for the Northern District of New York (Hon. Thomas J. McAvoy, Chief USDJ) and, upon appeal, the Second Circuit Court of Appeals accepted the facts alleged in the complaint, petitioner's supporting affidavits and interrogatory answers, and reasonable inferences drawn therefrom in the light most favorable to the petitioner.

The complaint alleges that petitioner was arrested in his home in the early morning hours of March 18, 1994 for an alleged violation of New York Vehicle & Traffic Law § 1192(3) [driving while intoxicated], and § 1120(a) [failure to keep right]. The charges arose out of an accident that took place on December 4, 1993 in Yates County, New York. Petitioner alleges that he was a passenger in defendant VanAmburg's pick-up truck when VanAmburg lost control of the truck, causing it to strike a culvert causing injuries to the petitioner. When the police arrived at the scene, VanAmburg allegedly admitted that he was the driver and was issued uniform traffic tickets by the defendant Bradley Quayle of the Yates County Sheriff's Department. At some point between December 4, 1993 and March of 1994, however, the tickets issued to VanAmburg were dismissed and then issued to the petitioner as the alleged driver of the vehicle.

On March 16, 1994, Justice Duane Shay of the Town Court

of Italy, Yates County, issued a warrant for petitioner's arrest. On March 18, 1994 between 3:00 a.m. and 5:00 a.m. officers of the Yates and Jefferson County Sheriffs' Departments arrested petitioner at his home in the Town of Evans Mills in Jefferson County, and transported him to the Town of Watertown Justice Court, Marilyn Outwater, Town Justice, some 20 miles away from petitioner's residence. Yates County, on the other hand, is some 100 miles away from petitioner's home in Jefferson County.

Although Justice Shay's warrant for petitioner's arrest was extant, and the warrant of arrest and accompanying information and arrest report were faxed by the Yates County Sheriff's office to the Jefferson County Sheriff's office at approximately 3:51 a.m. on March 18, 1994, petitioner contends that neither the arresting sheriffs nor the Town Justice were in possession of the warrant at the time of his arrest. Petitioner further alleges that Justice Outwater proceeded to arraign him and refused to give him a warrant, summons, uniform traffic ticket, affidavit, or any other documents supporting his arrest, and proceeded to set bail in the sum of $800 (as requested in the Yates County Sheriff's faxed transmission enclosing the warrant). A week later, petitioner was again brought before Justice Outwater, and was furnished with illegible copies of DWI tickets. Thereafter, petitioner was released, and on March 4, 1995 was found not guilty by a jury in the Town of Italy, Yates County.

Petitioner commenced this action under § 1983 and the Fourteenth Amendment, alleging that the defendants conspired to cause the deprivation of his civil rights, his false arrest, imprisonment and malicious prosecution. Petitioner maintained that the respondent Outwater "committed extra-judicial acts in violation of his civil rights and may not therefore avail herself of the defense of absolute judicial immunity"; that Justice Outwater conspired with the other defendants to have petitioner

arraigned in the middle of the night; arraigned him without a warrant or accusatory instrument; abused her discretion in setting bail; and ignored the New York statutory requirement that the arrest warrant had to be endorsed by a local criminal court of Jefferson County, since he was arrested in neither the county in which the arrest warrant was returnable, Yates County, nor another county that adjoins Yates County (New York Criminal Procedure Law § 120.90(3)).[1]

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1. § 120.90(3) provides in relevant part:

> Upon arresting a defendant for an offense other than a felony pursuant to a warrant of arrest in a county other than the one in which the warrant is returnable or one adjoining it, a police officer or peace officer . . . if he be one to whom the warrant is addressed must inform the defendant that he has a right to appear before a local criminal court of the *county of arrest* for the purpose of being released on his own recognizance or having bail fixed. If the defendant does not desire to avail himself of such right, the officer must request him to endorse such fact upon the warrant, and upon such endorsement the officer must without unnecessary delay bring him before *the court in which the warrant is returnable*. If the defendant does desire to avail himself of such right, or if he refuses to make the aforementioned endorsement, the officer must without unnecessary delay bring him before *a local criminal court of the county of arrest*. Such court must release the defendant on his own recognizance or *fix bail* for his appearance on a specified date *in the court in which the warrant is returnable*. If the defendant is in default of bail, the officer must without unnecessary delay bring him before *the court in which the warrant is returnable*.

(Emphasis added).

Justice Outwater moved to dismiss on the ground of judicial immunity. Justice Outwater conceded that the arrest warrant issued for the petitioner was not endorsed by a local criminal court as provided by the statute, but that the absence of that endorsement did not mean that she had no jurisdiction over the subject matter of petitioner's arraignment. Rather, Justice Outwater was specifically granted the power to arraign the petitioner and fix bail pursuant to Criminal Procedure Law § 120.90(3), and any alleged failure on her part to see to it that the defendant police officers complied with the notice provision of the statute, while a procedural error, did not divest her of subject matter jurisdiction over the misdemeanor charge. By allegedly failing to enforce full compliance with the statute, she may have acted in excess of her jurisdiction by proceeding without proper jurisdiction over petitioner's person, but did not act in the clear absence of all jurisdiction.

The District Court, relying upon *Maestri v. Jutkofsky*, 860 F.2d 50 (2d Cir. 1988), denied the motion to dismiss, concluding that Justice Outwater could not rely on CPL § 120.90(3) to support subject matter jurisdiction over petitioner's arraignment since the arrest warrant was not endorsed by a local criminal court, and that even if the arrest warrant was in the court's possession, it was not provided to the petitioner, thereby depriving him of a choice of arraignment forums. Judge McAvoy concluded that a reasonable judge would have known that, by failing to give Tucker the option of arraignment forums, the statute was not complied with, and Justice Outwater must have so known. Accordingly, the court concluded that Justice Outwater acted in clear absence of jurisdiction because she assumed authority outside the geographic bounds of her office.

Justice Outwater appealed the District Court's denial of her motion to dismiss. The Second Circuit Court of Appeals reversed, unanimously holding in a lengthy and well-reasoned

opinion that Justice Outwater is entitled to absolute immunity from damages by virtue of possessing subject matter jurisdiction over the preliminary proceedings that she conducted pursuant to § 120.90(3) of the New York Criminal Procedure Law. *Tucker v. Outwater*, 118 F.3d 930 (July 7, 1997).

Because the complaint included a prayer for attorneys fees and "other relief", the right to which was not addressed by the District Court prior to respondent's interlocutory appeal, the Court of Appeals remanded the case for further proceedings. To date, the petitioner has not pursued such other relief in the District Court.

REASONS FOR DENYING THE WRIT

As noted in the rules of this Court, a petition for writ of certiorari will be granted only for compelling reasons. Supreme Court Rule 10; *Rice v. Sioux City Memorial Park Cemetery, Inc.*, 349 U.S. 70. In considering a petition arising from a decision of a Circuit Court of Appeals, this Court will consider whether or not the lower court has entered a decision in conflict with the decision of another Court of Appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctions such a departure by a lower court, as to call for an exercise of this Court's supervisory power (Rule 10(a)). The Court further will consider whether the Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this court (Rule 10(c)).

Petitioner has failed to satisfy any such basis warranting this Court's exercise of its discretion in this case.

The opinion of the Second Circuit in the instant case sets forth a well-reasoned and comprehensive analysis of the law of judicial immunity from the seventeenth century to the present. In determining that Justice Outwater did not act in the complete absence of jurisdiction when she arraigned petitioner and fixed and enforced his bail, all as authorized by New York Criminal Procedure Law § 120.90(3), (*Tucker*, 118 F.3d at 935), the Second Circuit discussed and relied on the judicial immunity jurisprudence established by this court in *Bradley v. Fisher*, 80 U.S. (13 Wall) 335 and *Stump v. Sparkman*, 435 U.S. 349. The court correctly concluded that Justice Outwater was entitled to judicial immunity notwithstanding the alleged imperfect exercise of the particulars of her jurisdiction during the arraignment. The court properly noted that although Justice Outwater may have acted in excess of her jurisdiction, her failure to endorse the warrant or advise Tucker of his right to be arraigned in Yates County, while procedural errors, did not deprive her of subject matter jurisdiction of the arraignment conferred by state statute.

In so concluding, the Second Circuit distinguished and harmonized its prior decision in *Maestri v. Jutkofsky*, 860 F.2d 50 (1988), in which the judicial immunity defense was rejected because of the defendant Town Justice's issuance of a warrant of arrest for the plaintiffs in the clear absence of all jurisdiction of that court. In contrast, in the instant case "it cannot be said consistently with Supreme Court jurisprudence that "jurisdiction is clearly absent" where, as here, "jurisdiction over the subject-matter is invested by law in the judge." (*Tucker, supra* at 936 citing *Stump*, 435 U.S. at 356 n.6).

Furthermore, the Second Circuit found its decision in the instant case to be consistent with not only its own earlier immunity rulings (*e.g. Maestri, supra*; *Greene v. Maraio*, 722 F.2d 1013 (2d Cir. 1983) and *Heimbach v. Village of Lyons*, 597 F.2d 344 (2d Cir. 1979), but with the judicial immunity

jurisprudence of sister circuits, including the Ninth Circuit (*O'Neil v. City of Lake Oswego*, 642 F.2d 367 (1981)), the Fifth Circuit (*Williams v. Sepe*, 487 F.2d 913 (1973)), the Third Circuit (*Robinson v. McCorkle*, 462 F.2d 111 (1972)), and the Seventh Circuit (*Jacobsen v. Schaefer*, 441 F.2d 127 (1971) and *Lopez v. Vanderwater*, 620 F.2d 1229 (1980)).

Thus, it is clear that the decision in this case in not in conflict with the decision of another United States Court of Appeals on the same matter, nor does it conflict with a decision of a state court of last resort, nor has it so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power. Furthermore, the question of law decided by the court below has been settled by this Court, and was not decided in a way that conflicts with relevant decisions of this Court. Petitioner's petition for review, at best, argues that the Second Circuit misapplied a properly stated rule of law: respondent disagrees, but even assuming so for purposes of argument, that fact is not generally sufficient for the grant of a petition for writ of certiorari (*see* Rule 10 of the Rules of the Supreme Court).

Finally, inasmuch as the Second Circuit reversed and remanded the case for further proceedings in light of petitioner's prayer for attorneys' fees and "other relief" in his complaint, this matter has not yet been finally concluded as to Justice Outwater, and in the absence of a final resolution of petitioner's claim against her is not final and should not be reviewed by this Court. *See Maryland v. Baltimore Radio Show, Inc.*, 338 U.S. 912.

CONCLUSION

No compelling reason for a grant of a writ of certiorari has been shown by the petitioner. The Second Circuit Court of Appeals correctly applied the settled law of judicial immunity to petitioner's factual allegations, and properly concluded that Justice Outwater did not act in the clear absence of all jurisdiction by arraigning the petitioner pursuant to the subject matter jurisdiction expressly conferred by the New York Criminal Procedure Law.

Accordingly, petitioner's petition for writ of certiorari should be denied.

Respectfully submitted,

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